

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of K. J. SHULER, Minor.

UNPUBLISHED
September 11, 2014

No. 320823
Branch Circuit Court
Family Division
LC No. 13-004889-NA

Before: SHAPIRO, P.J., and WHITBECK and STEPHENS, JJ.

PER CURIAM.

Respondent-father, R. Shuler, appeals as of right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), MCL 712A.19b(3)(c)(ii) (other conditions exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (child will be harmed if returned to parent). We affirm.

I. FACTS

A. BACKGROUND FACTS

On January 1, 2013, Shuler and T. Miller, the child's mother, participated in domestic violence that resulted in bloodied scratches on Shuler and bruises on Miller's arms. On January 4, 2013, the Department petitioned to remove the child from the home. Shuler was diagnosed with alcohol dependence, anxiety disorder, and narcissistic personality features. However, the trial court dismissed the petition by stipulation and returned the child to Shuler and Miller's care after they agreed to participate in services.

On March 31, 2013, Shuler was arrested on domestic violence charges. On April 1, 2013, Miller left the child alone in the apartment. The police were called after the child was found wandering the premises, looking for Miller. The Department discovered that there was no food in the apartment and that the electrical service was scheduled to be shut off on April 5, 2013. The Department also discovered that Miller had been taking the child to a friend's residence, where Miller and the friend used controlled substances. The trial court placed the child in foster care. Shuler pleaded that he had left the child in an unfit home environment, and the trial court took jurisdiction over the child.

On May 20, 2013, Shuler reported to the Department that he was homeless and staying with friends. Shuler consistently attended substance abuse testing until June 2013. However,

on June 5, 2013, Shuler was arrested for marijuana possession after he appeared in court intoxicated, with a blood alcohol content of .245. Shuler was sentenced to serve 30 days in jail and to participate in probation.

After Shuler was released from jail, he reported to the Department that he was still homeless and intended to stay with friends. Shuler agreed to find an independent place to live, but remained homeless through the termination hearing. Shuler began missing his drug and alcohol screens in September 2013, and informed the Department that he would not attend drug screenings because they were a “waste of [his] time.” Shuler subsequently came to the November 21, 2013 dispositional hearing intoxicated with a blood alcohol content of .20.

B. THE TERMINATION PETITION

On January 3, 2014, the Department petitioned to terminate Shuler’s parental rights. At the termination hearing, Shuler testified that he appeared in court intoxicated in June 2013. Shuler admitted that he stopped participating in substance abuse testing in September 2013, and counseling in November 2013. Shuler testified that he was still homeless. On the day of the second hearing, Shuler testified that he took a breathalyzer test that morning and blew .30, but he claimed that he had not consumed alcohol for a week.

According to Ashley Dillon, the child’s foster care worker, the child acted out by stealing and punching other children. The child did not “believe that anybody loves her,” did not “understand where she belongs[,]” and wanted to be part of a family. Dillon believed that the child needed a safe and stable home environment.

Susan Lowe, the child’s counselor, testified that the child was clingy and exhibited defiant behavior because she did not have a dependable caretaker and had become very independent. Lowe testified that the child had not been able to form attachments because her caregivers were not dependable. According to Lowe, the child needed “a very stable, loving, consistent, patient environment to be able to form a secure attachment.” Lowe testified that the child’s need was “really important because that’s going to affect the relationship she has for the rest of her life, being able to have stable relationships with friends, and eventually as an adult, romantic relationships, and as a parent” Lowe testified that putting the child back in her former situation would cause her to revert to ambivalent attachments.

C. THE TRIAL COURT’S FINDINGS

The trial court found that Shuler’s substance abuse issue continued to exist, noting that “[e]very time Mr. Shuler’s come to court, he’s registered on a preliminary breath test for alcohol” The trial court also found that Shuler’s lack of suitable housing for the child was a new condition that existed. It found that Shuler could not provide for himself or the child. The trial court found that it was not reasonably likely that Shuler would be able to rectify those conditions within a reasonable time. The trial court found that Shuler did not intend to harm the child, but had chosen substance abuse over her wellbeing. And the trial court found that, if it returned the child to Shuler, the child would suffer from psychological harm.

The trial court found that the child was both defiant and clingy, and had an ambivalent attachment style caused by not having dependable caregivers. The trial court found that the child

needed “some sort of security, some sort of stability.” The trial court strongly emphasized the child’s need for security, consistency, and love when it found that terminating Shuler’s parental rights was in the child’s best interests.

II. THE CHILD’S BEST INTERESTS

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

The trial court must order the parent’s rights terminated “if the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of evidence on the whole record that termination is in the children’s best interests.”¹ We review for clear error the trial court’s determination regarding the children’s best interests.² The trial court’s decision is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake.³

To properly preserve an issue, a party must raise the issue before the trial court.⁴ Here, Shuler did not argue below that a guardianship would be in the child’s best interests, and the trial court did not address or decide the issue. Therefore, this issue is not preserved.

“This Court ordinarily will not consider unpreserved issues raised for the first time on appeal.”⁵ However, we may address a significant, unpreserved claim for which all the necessary facts are before this Court if it is in the interests of justice to do so.⁶ We review unpreserved issues for plain error affecting a party’s substantial rights.⁷

B. LEGAL STANDARDS

The trial court should weigh all the evidence available to determine the children’s best interests.⁸ To determine whether it is in the child’s best interest to terminate a parent’s rights, the court should consider a wide variety of factors, which may include “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.”⁹ The trial court may consider the

¹ MCL 712A.19b(5); *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

² MCR 3.977(K); *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

³ *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

⁴ *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

⁵ *In re RFF*, 242 Mich App 188, 204; 617 NW2d 745 (2000).

⁶ *Id.*; *In re PAP*, 247 Mich App 148, 152; 640 NW2d 880 (2001).

⁷ *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

⁸ *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

⁹ *Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted).

parent's compliance with his or her case service plan, the child's well-being while in care, and the possibility of adoption.¹⁰ The trial court may also consider a parent's history of mental health and substance abuse problems.¹¹

C. APPLYING THE STANDARDS

Shuler contends that the trial court clearly erred by finding that terminating his parental rights was in the child's best interests because it did not consider the possibility of a guardianship when it made its best interests findings. We disagree.

MCL 712A.19a(7)(c) allows, but does not require, the trial court to appoint a guardian for the child as long as a guardianship is in the child's best interests. If terminating the parent's parental rights is in the child's best interests, the trial court need not explore other placement options.¹² Here, there is no evidence in the record that there was a person willing to be a guardian for the child. Further, there was extensive evidence supporting the trial court's finding that termination was in the child's best interests: Shuler failed to make progress on his service plan, had a history of substance abuse, and the child's counselor testified that she had a strong need for stability and permanency in order to avoid psychological damage that could affect the rest of her life.

Given the available evidence, the trial court did not clearly err by failing to consider a guardianship for the child, and did not clearly err when it found that terminating Shuler's parental rights was in the child's best interests.

III. CONCLUSION

We conclude that the trial court did not clearly err when it found that terminating Shuler's parental rights was in the child's best interests.

We affirm.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Cynthia Diane Stephens

¹⁰ *White*, 303 Mich App at 714.

¹¹ *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

¹² See *Olive/Metts*, 297 Mich App at 43; *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999), overruled in part on other grounds by *In re Morris*, 491 Mich 81; 815 NW2d 62 (2012).